

Township Cemetery Ordinance
Elk Township, Lake County, Michigan
September - 2016 - #1

An ordinance to protect the public health, safety and general welfare by establishing regulations relating to the operation, control, maintenance and management of cemeteries owned, controlled or operated by the Township of ELK, in LAKE County, Michigan; to provide penalties for the violation of said ordinance; and to repeal all ordinances or parts of ordinances which may predate this ordinance.

THE TOWNSHIP OF ELK, COUNTY OF LAKE, AND STATE OF MICHIGAN ORDAINS:

Section 1: Title

This Ordinance shall be known and cited as the "Elk Township Cemetery Ordinance September-2016 - #1."

Section 2: Purpose and Intent

The ELK Township Board recognizes and concludes that the proper and reasonable maintenance, appearance and use of the cemeteries owned or controlled by the Township is an important function of the government of the Township. It is also important that burials, disinterments, and other matters associated with a municipal cemetery are handled in a respectful and proper way in order to promote the safety, public health and general welfare of the community. The Township Board finds that the adoption and enforcement of this Ordinance is in the best interests of the property owners and residents of the Township.

Section 3: Definitions

- (a) A "cemetery plot" shall consist of an area in LAKEVIEW cemetery sufficient to accommodate one burial space for one deceased person. It shall consist of a land area at least forty-eight (48) inches wide and ninety-six (96) inches in length. Exceptions may be made with Township permission to accommodate infant burial or the burial of cremains.
- (b) "Township" means ELK Township.
- (c) "Township cemetery" or "cemetery" means any cemetery located with ELK Township, including LAKEVIEW Cemetery, on Six Mile Rd.
- (d) "Green Burial" refers to a burial without embalming the remains in a manner that does not inhibit decomposition but allows for a more natural biodegradation.

Section 4: Sale of Cemetery Plots

- (a) Cemetery plots shall be sold by the Township for the purpose of burial for the purchaser of a cemetery plot, or his or her immediate family. No sale shall be made to funeral directors or others, except for those acting as an agent for an eligible purchaser.
- (b) All sales and transfers of cemetery plots shall be made on a form approved by the Township Board and signed by the designated Township official, which grants a right of burial only and does not convey any other title or right to the cemetery plot or burial space sold. Such forms shall be signed by the Township Clerk or Deputy Township Clerk, and shall constitute a permit when approved.
- (c) Cemetery plots may be sold by the Township to any resident or taxpayer of the Township, or Sauble Township. The Township Clerk is hereby granted the authority to vary the aforesaid restriction on sales where the purchaser discloses sufficient personal reason for burial within the Township through previous residence in the Township or relationship to persons interred in the Township cemetery involved. Any such decision by the Township Clerk (either granting or denying such variance) may be overturned by the Township Board.
- (d) Cemetery plots are transferable with written approval by the Township Clerk, and Sexton. Transfers from residents to non-residents require that additional fees be paid per the Cemetery Fee Schedule Resolution
- (e) While it is not anticipated, the Township Board shall have the authority to place a limit on the number of cemetery plots sold to a particular person, as well as such person's family and relatives. Furthermore, the Township shall have the absolute right and discretion to determine whether a particular cemetery plot or plots will be sold to a specific person and where such cemetery plot or plots will be located and within which area of LAKEVIEW Cemetery. Such decision shall be based upon reasonable factors, including, but not limited to, the number of vacant cemetery plots available and whether family or relatives of the person seeking to purchase a cemetery plot or plots are buried adjacent or nearby the cemetery plot or plots requested.

Elk Township Cemetery Ordinance September-2016 - #1.

- (f) The Township shall have the right to correct any errors that may be made concerning interments, or in the description, or transfer of any cemetery plot, either by canceling the permit for a particular vacant cemetery plot or plots and substituting another vacant cemetery plot or plots in a similar location within the LAKEVIEW Cemetery, or by refunding the money paid for the cemetery plot to the purchaser or the successor of the purchaser. In the event that an error involves the interment of the remains of any person, the Township shall have the right to remove and transfer the remains so interred to another cemetery plot in a similar location in the same Township cemetery in accordance with law.
- (g) The owner of every cemetery plot shall be responsible for notifying the Township whenever that person's mailing address changes.
- (h) A copy of this ordinance will be provided to purchasers of plots.

Section 5: Purchase Price for Cemetery Plots; Indigent Burials

- (a) The Township may charge reasonable fees for cemetery plots. Such fees shall be set from time to time by resolution of the Township Board, payable to ELK Township, via the Clerk. The lawful owner of any cemetery plot within LAKEVIEW Cemetery shall promptly provide the Township Clerk with any change in that owner's mailing address.
- (b) The Township Board may waive some or all fees for the burial of indigent persons. Furthermore, the Township Board may set aside a portion of a Township cemetery or cemeteries for the burial of indigent persons.
- (c) The Certificate of Plot Purchase will list all whom may be buried in that space.

Section 6: Grave Opening Charges

- (a) The Township may charge reasonable fees for the opening and closing of any cemetery plot, prior to and following a burial therein, and including the interment of ashes. Such fees shall be set from time to time by resolution of the Township Board, payable to ELK Township, via the Clerk.
- (b) No cemetery plot shall be opened or closed except under the direction and control of the Township Sexton or such other individual as is designated by the Township Board. This subsection B shall not apply to any grave opening, disinterment, or similar matter which is done pursuant to a valid court order or under the supervision and direction of local or state health department authorities; however, even in such cases, the Township Sexton shall be given at least forty-eight (48) hours prior notice of when such grave opening or closing will occur.

Section 7: Markers, Memorials, and Monuments

- (a) All markers, memorials, and monuments must be comprised of stone or other equally durable composition and shall face the same direction as the markers and memorials around them.
- (b) Except for monuments that existed in a Township cemetery before the effective date of this Ordinance, monument shall be defined as any marker, memorial, statue, or similar item which exceeds thirty (30) inches in height above normal ground level or which has a ground surface area exceeding thirty (30) inches in width (or forty-eight (48) inches in width for a double marker), with an overall height of no more than thirty (30) inches above ground level, including the mandatory foundation.
- (c) Footstones shall be flush with the ground.
- (d) Should any marker, monument, or memorial (including any monument or memorial that was in place before this Ordinance became effective) become broken, moved off its proper site, dilapidated or a safety hazard, the Township Board shall have the right to repair, replace, or remove the same. The Township shall make reasonable attempts to contact the owner of the cemetery plot prior to any such work beginning.
- (e) The maintenance, repair, and upkeep of a cemetery memorial, marker, monument, urn, or similar item is the responsibility of the heirs or family of the person buried at that location. The Township has no responsibility or liability regarding the repair, maintenance, or upkeep regarding any such marker, memorial, monument, urn, or similar item.
- (f) All markers, memorials, and monuments existing before the effective date of this Ordinance shall be grandfathered in as long as they do not pose a health or welfare risk.

Elk Township Cemetery Ordinance September-2016 - #1.

Section 8: Interment Regulations

- (a) Only one (1) person shall be buried in a cemetery plot (full burial), except for a parent and infant child or two (2) children buried in the same plot when approved by the Township Sexton. In addition, two (2) cremains with a full burial or three (3) cremains with no full burial are permitted, when approved by the Township Sexton.
- (b) The Township Sexton shall be given not less than forty-eight (48) hours prior notice in advance of any funeral to allow for the opening of the cemetery plot. The opening and closing of cemetery plots shall be done only by the Township Sexton or such person or persons as are designated by the Township.
- (c) The appropriate permit or form issued by the Township for the cemetery plot involved, together with appropriate identification of the person to be buried therein and the burial-transit permit from the health department, shall be presented to either the Township Sexton or the Township Clerk (or deputy Clerk, when Clerk is unavailable) prior to interment. Where such permit or form has been lost or destroyed, the Township Sexton and/or Township Clerk must be satisfied, from his or her records, that the deceased person to be buried in the cemetery plot is an authorized and appropriate person for that space before any interment is commenced or completed.
- (d) The surface of all graves shall be kept in an orderly and neat-appearing manner within the confines of the cemetery plot involved.

Section 9: Disinterments

- (a) No disinterment or digging up of an occupied grave shall occur until and unless any and all permits, licenses and written authorizations required by law for such disinterment or digging up of an occupied grave have been obtained from any applicable state or county agency, governmental unit, or official, and a copy of the same has been filed with the Township.
- (b) The Township Board shall have the authority to refuse to allow a disinterment or the digging up of an occupied grave if the disinterment or digging up of an occupied grave is not done pursuant to a court order (issued by a court of competent jurisdiction), or does not have a reasonable basis.

Section 10: Winter Burials

- (a) The Township may charge additional fees for winter burials.
- (b) The Township does not store, or provide for, decedents.
- (c) No winter burials shall occur without the prior consent of the Township Sexton.

Section 11: Cremains

- (a) Cremains may be buried in a container approved by the Township in a cemetery plot or in a columbarium that has been installed by the Township within Lakeview cemetery.
- (b) No cremains shall be scattered or dispersed within Lakeview Cemetery.
- (c) Cremains may be interred within immediate family member's plot(s) with permission from the Township Sexton.

Section 12: Grounds Maintenance

- (a) Flower pots, urns, and grave blankets may be placed and maintained at the head stones of graves. Veteran flags and flag holders may be displayed from Memorial Day through Veteran's Day.
- (b) No grading, leveling, or excavating within a cemetery shall be allowed without the prior permission of the Township Sexton or the Township Clerk. Furthermore, no tree, shrub, landscaping, or similar plantings shall occur without the prior permission of the Township Sexton or the Township Clerk.
- (c) No flowers, shrubs, trees, or vegetation of any type shall be planted outside of any plot without permission from the Township Sexton. Any of the foregoing items planted without Township approval will be removed by the Township Sexton.
- (d) The Township Sexton reserves the right to remove or trim any existing trees, plants, or shrubs located within a cemetery in the interest of maintaining proper appearance and the use of the cemetery.
- (e) Mounds, bricks, blocks, and any borders that hinder the free use of a lawn mower or other gardening apparatus are prohibited, unless placed before the effective date of this Ordinance.

Elk Township Cemetery Ordinance September-2016 - #1.

- (f) The Township Sexton shall have the right and authority to remove and dispose of any and all growth, emblems, displays, containers, and other items that are unsightly, a source of litter, or a maintenance problem.
- (g) Surfaces other than earth or sod are prohibited.

Section 13: Disclaimer of Township Liability and Responsibility

Every person who enters, remains in, and travels within a Township cemetery does so at their own risk. The Township is not responsible for any injury, accident, or other calamity that might occur to any person present in a Township cemetery. Furthermore, the Township is not responsible for any damage or vandalism to, theft of, or deterioration of any burial monument, headstone, flower urn, or other item placed anywhere in a Township cemetery. The purchaser or transferee of any cemetery plot or the equivalent (and all subsequent transferees, assigns, heirs, or beneficiaries) hereby releases, waives, indemnifies and holds harmless the Township for, from, and against any injury, damages, causes of action, claims, costs, and expenses associated with any headstone, memorial, monument, or similar items, and any matter related to the cemetery involved. Such waiver, release, and hold harmless provision shall apply not only to the Township, but also to the Township Sexton and any Township official or agent.

Section 14: Forfeiture of vacant cemetery plots or burial spaces

Cemetery plots or burial spaces sold after the effective date of this Ordinance and remaining vacant for fifty (50) years or more from the date of their sale shall automatically revert to the Township upon the occurrence of the following events:

- (a) Notice shall be sent by the Township Clerk by first-class mail (with delivery notification & signature required) to the last known address of the last owner of record informing him/her of the expiration of the 50-year period, and that all rights with respect to said plots or spaces will be forfeited if he/she does not affirmatively indicate in writing to the Township Clerk within ninety (90) days from the date of mailing of such notice of his/her desire to retain such burial rights; **and**
- (b) No written response indicating a desire to retain the cemetery plots in question is received by the Township Clerk from the last owner of record of said plots, or his/her heirs or legal representative, within ninety (90) days from the date of mailing of said notice.

Section 15: Repurchases of Plots or Burial Spaces

The Township may repurchase any cemetery plot from the owner for a price set by the Township Board, upon the written request of said owner, or his/her legal heirs or representatives.

Section 16: Records

The Township Clerk shall maintain records concerning all burials, cemetery plots, issuance of burial permits, transfer of rights of burials, and any other records of the Township related to Township cemeteries, and the same shall be open to public inspection at all reasonable business hours.

Section 17: Vaults, Cremains, and Green Burials

- (a) All burials utilizing caskets, and including embalming of decedents, shall be within a standard concrete vault (which meets all applicable laws) installed or constructed in each cemetery plot before interment. Vaults of other suitable materials may be allowed at the discretion of the Township.
- (b) Cremains shall be in a container approved by the Township.
- (c) Green Burials, ones that do not include embalming a decedent, are permitted in Lakeview Cemetery with prior written approval of Township Sexton and/or Township Clerk, provided they are interred, in an area deemed suitable by Township Sexton.

Section 18: Prohibited Uses and Activities

The following prohibitions shall apply within any Township cemetery:

- (a) No person shall destroy, deface, apply graffiti to, or otherwise injure any monument, sign, tree, or other lawful item located within a Township cemetery.
- (b) No person shall disturb the peace, unreasonably annoy, harass, or disturb any other person who is lawfully present on the grounds of any Township cemetery.
- (c) No vehicles shall travel on any part of the cemetery other than designated roads.

Elk Township Cemetery Ordinance September-2016 - #1.

- (d) There shall be no snowmobiles.
- (e) There shall be no unlawful interference with, or disruption of a lawful funeral or funeral procession.
- (f) There shall be no solicitation.
- (g) There shall be no littering or dumping.
- (h) There shall be no private signs.
- (i) No firearms shall be discharged except that military or other veterans' organizations may carry for the purpose of firing over the grave at the burial of a member.
- (j) Hours of operation are dawn until dark, no overnight access.

Section 19: Authority of the Township Sexton

- (a) The Township Board shall appoint a Township Sexton, who shall serve at the discretion of the Township Board. The Township Sexton may be a Township employee or independent contractor for the Township at the discretion of the Township Board.
- (b) The Township Sexton shall assist other Township officials with the enforcement and administration of this Ordinance.
- (c) The Township Sexton shall have such duties and obligations with regard to Township cemeteries as may be specified from time to time by the Township Board.

Section 20: Fees

The Township Board shall have the authority to set fees pursuant to this Ordinance from time to time by resolution. Such fees can include, but are not limited to, disinterment permit, grave opening, grave closing, winter or holiday burial, the price for a new cemetery plot, transfer fees for cemetery plots, and other matters.

Section 21: Applicability of this Ordinance

- (a) This Ordinance shall apply only to cemeteries owned, controlled, or operated by the Township.
- (b) The provisions of this Ordinance shall not apply to Township officials or their agents or designees involved with the upgrading, maintenance, administration or care of a Township cemetery.
- (c) The provisions of this Ordinance shall not apply to police officers or firefighting officials or officers involved in carrying out their official duties.

Section 22: Interpretation/Appeals to the Township Board

- (a) The Township Board shall have the authority to render binding interpretations regarding any of the clauses, provisions, or regulations contained in this Ordinance and any rule or regulation adopted pursuant to this Ordinance, as well as their applicability. The Township Board is also authorized to waive application of the strict letter of any provision of this Ordinance or any rules or regulations promulgated under this Ordinance where practical difficulties in carrying out the strict letter of this Ordinance would result in hardship to a particular person or persons or the public. Any such waiver, however, must be of such a character as it will not impair the purposes and intent of this Ordinance.
- (b) Any party aggrieved by any interpretation or decision made by the Township Sexton or any Township official, agent or contractor pursuant to this Ordinance, as well as any matter relating to a Township cemetery, rights to a cemetery plot, or other matter arising pursuant to this Ordinance, shall have the right to appeal that determination/decision or matter to the Township Board. Any such appeal shall be in writing and shall be filed with the Township within thirty (30) days of the date of the decision, determination or other matter being appealed. The Township shall give the aggrieved party who filed the written appeal with the Township at least ten (10) days' prior written notice of the meeting at which the Township Board will address the matter unless an emergency is involved, in which case the Township shall utilize reasonable efforts to notify the aggrieved party who filed the appeal of a special or emergency meeting of the Township Board at which the matter will be addressed. Pursuant to any such appeal, the decision of the Township Board shall be final.
- (c) The Township Board may set a fee or fees for any such appeal from time to time by resolution.

Elk Township Cemetery Ordinance September-2016 - #1

Section 23: Authority of the Township to Remove Unauthorized or Unlawful Items from a Township Cemetery

Any items placed in the cemetery deemed unlawful according to this ordinance may be removed by the Sexton at the direction of the Elk Township Board.

Section 24: Penalties

A violation of this Ordinance constitutes a municipal civil infraction. Any person who violates, disobeys, omits, neglects, or refuses to comply with any provision of this Ordinance, or any permit or approval issued hereunder, or any amendment thereof, or any person who knowingly, or intentionally aids, or abets another person in violation of this Ordinance, shall be in violation of this Ordinance and shall be responsible for a civil infraction. The civil fine for a municipal civil infraction shall be not less than one hundred dollars (\$100) for the first offense and not less than two hundred dollars (\$200) for subsequent offenses, in the discretion of the court, in addition to all other costs, damages, expenses and remedies provided by law. For purposes of this section, "subsequent offense" means a violation of the provisions of this Ordinance committed by the same person within twelve (12) months for which said person admitted responsibility, or was adjudged to be responsible. Each day during which any violation continues shall be deemed a separate offense.

Section 25: Township Officials Who Can Enforce this Ordinance

Unless otherwise specified by the Township Board by resolution, the following officials or officers shall have the authority to enforce this Ordinance and to issue civil infraction citations/tickets pursuant to this Ordinance:

- Township Supervisor
- Township Clerk
- Township Sexton
- Any deputy of the county sheriff's department
- Any State Police officer

Section 26: Severability

The provisions of this Ordinance are hereby declared to be severable and should any provision, section, or part thereof be declared to be invalid, or unconstitutional by any court of competent jurisdiction, such decision shall only affect the particular provision, section, or part thereof involved in such decision and shall not affect or invalidate the remainder of this Ordinance, which shall continue in full force and effect.

Section 27: Effective Date; Conflicts

This Ordinance shall become effective thirty (30) days after a copy of this Ordinance (or summary thereof) appears in the newspaper. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

The above Ordinance was offered for adoption by Township Board Member _____ and was seconded by Township Board Member _____, the vote being as follows:

| | |
|----------------------|----------------------|
| YEAS:___ | Lou Fitz _____ |
| NAYS:___ | Vicki Gates _____ |
| ABSENT/ABSTAIN:_____ | Brandy Myers _____ |
| | John Fairbanks _____ |
| | Sharon Young _____ |

ORDINANCE DECLARED ADOPTED.

CERTIFICATION

I hereby declare that the above is a true copy of an ordinance adopted by the ELK Township Board at a regularly scheduled meeting held on September 13, 2016 at the ELK Township Hall, pursuant to the required statutory procedures.

Dated: September 13, 2016

Respectfully submitted,

By: _____, Elk Township Clerk